



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

MAR 13 2006

Timothy D. McNair, Esq.  
Attorney and Counselor at Law  
821 State Street  
Erie, Pennsylvania 16501

RE: MUR 5556  
Porter for Congress and  
Edward G. Plonski, in his official  
capacity as treasurer

Dear Mr. McNair:

On October 13, 2004, the Federal Election Commission notified your clients Porter for Congress and Edward G. Plonski, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you and your clients.

Upon further review of the allegations contained in the complaint, and information provided by you and your clients, the Commission, on March 7, 2006, found that there is reason to believe that your clients Porter for Congress and Edward G. Plonski, in his official capacity as treasurer, violated 2 U.S.C. § 441d(a)(1). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter.

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Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner  
Chairman

Enclosures  
Factual and Legal Analysis

cc: candidate (w/o enclosures)

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Porter for Congress and MUR 5556  
5 Edward G. Plonski,  
6 in his official capacity as treasurer  
7

8 **I. INTRODUCTION**

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10 The complaint alleges that Porter for Congress (“the Committee”), the principal authorized  
11 committee for Steven Porter’s 2004 race for Pennsylvania’s 3<sup>rd</sup> Congressional District, violated  
12 Section 441d(a)(1) of the Federal Election Campaign Act of 1971, as amended (“the Act”), by  
13 failing to include in a radio advertisement a disclaimer stating who paid for the advertisement. *See*  
14 11 C.F.R. § 110.11(b)(1).

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

17 During the period preceding the 2004 general election, the Committee ran a radio  
18 advertisement featuring Steven Porter.<sup>1</sup> According to the transcript of the advertisement at issue, an  
19 announcer first identifies Porter as the Democratic candidate for Congress. Porter then criticizes his  
20 opponent, Representative Phil English and states that, unlike English, he will stand up for children,  
21 seniors and all victims of crime, concluding “It’s about time we had a representative who did.” The  
22 announcer then states “Dr. Steven Porter for Congress. This time, vote as though your future  
23 depends on it—because it does. Phil English had his chance and failed us.” Porter closes the radio  
24 advertisement with the statement “I’m Steve Porter and I’m proud to endorse this message.” *Id.*

<sup>1</sup> Complainant sent an audiotape and a transcript of the advertisement. The audiotape was damaged, but respondents confirmed that the script provided by complainant was accurate.

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1 The transcript of the advertisement does not include a disclaimer identifying the entity that paid for  
2 the communication.

3 The Committee concedes in response to the complaint that the advertisement at issue did not  
4 include a disclaimer stating that it had paid for the communication, and that the campaign should  
5 have caught the error, but did not. Resp. at 1. According to the Committee, when it discovered the  
6 omission, it immediately discontinued running the advertisement. *Id.*

7 The subject advertisement aired on seven radio stations in the Western Pennsylvania area  
8 from September 27, 2004 through October 1, 2004. Although the Committee's response states that  
9 the advertisement ran less than 100 times, *id.*, the documents submitted with the response indicate  
10 that it ran 127 times. Specifically, the advertisement aired five times on WJET-AM, 22 times on  
11 WRIE-AM, 27 times on WXKC-FM, 18 times on WPIC-AM, 17 times on WWGY-FM, 19 times  
12 on WISR-AM, and 19 times on WMGW/WTIV-AM. The Committee did not state in its response  
13 the amount it spent for the advertisement's production costs and advertising spot buys. However, its  
14 October Quarterly Report shows disbursements to Vic Rubenstein Associates, the vendor it  
15 identified in its response as the producer of the advertisement, on September 16, 2004 and  
16 September 23, 2004 for production costs and media buys in the amounts of \$61,879 and \$7,427.90,  
17 respectively, which may have included those related to the subject advertisement.

18 **B. Analysis**

19 Whenever a political committee of a candidate, like Porter for Congress, makes a  
20 disbursement for the purpose of financing any communication through any broadcasting station,  
21 such communication must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). The  
22 Act requires that if the communication is paid for by the authorized political committee of a

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1 candidate, the disclaimer “clearly state that the communication has been paid for by such authorized  
2 political committee.” 2 U.S.C. § 441d(a)(1).

3 Because its advertisement was transmitted through radio broadcasts, the Committee was  
4 required to include a disclaimer stating that it had paid for the communication at issue. As noted, in  
5 response to the complaint, the Committee admits that it failed to include the “paid for” disclaimer in  
6 radio advertisements that aired from September 27, 2004 through October 1, 2004.

7 Therefore, there is reason to believe that Porter for Congress and Edward G. Plonski, in his  
8 official capacity as treasurer, violated 2 U.S.C. § 441d(a)(1) by failing to include the required “paid  
9 for” disclaimer in an advertisement that aired 127 times.

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